IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 155 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

STAR STEEL PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 155 of 1991
MR TANVISH U BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred to us by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" under Section 256(1) of the Income Tax Act, 1961 (for short 'the Act'), at the instance of the Commissioner of Income Tax.

"Whether, the Appellate Tribunal is right in law and on facts in setting aside the order passed u/s. 154 wherein the I.T.O. had withdrawn the relief of Rs.7685/- under section 80J which had been brought forward for being set off against the income of the present assessment year ?".

2. The Assessment Year is 1980-81. The Assessing Officer vide order under Section 154 dated 31-03-1984 withdrew the relief under Section 80J of the Act amounting to Rs.7685 as a consequence of his action for A.Y. 1977-78 under Section 155(4A) of the Act.

3. It was fairly stated by Mr.M.R.Bhatt, learned Sr. Standing counsel on behalf of the applicant revenue, that the question referred for the assessment year under reference is consequent to the question referred in the assessee's own case for A.Y. 1977-78 i.e. I.T.R. No.156 of 1991.

4. In light of the fact that we have upheld the order of the Tribunal for A.Y. 1977-78 today by a separate judgement, it is not necessary for us to set out facts and contention in detail, as the basic controversy remains the same. The Tribunal's order, both for Assessment Years 1977-78 and 1980-81, is a common order dated 22-05-1990.

5. For the reasons stated in our judgement delivered today in I.T.R. No.156 of 1991, we hold that the Tribunal was right in law in holding that the Assessing officer was not justified in withdrawing relief of Rs.7685/= under Section 80J of the Act as there was no transfer of Plant & Machinery.

6. The question referred to us is answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.H.WAGHELA,J] [D.A.MEHTA, J]

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'Bhavesh'
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